IN THE HIGH COURT OF JUDICATURE AT PATNA
TEST CASE No.5 of 2006
IN THE GOODS OF LATE RENUKA CH
Versus
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17. 28.11. 08 The relative No.1 Sidheshwar Chatterjee has been personally served the notice and he appeared in this case. It was as early as on 2nd February 2008 that he had filed an objection styled as Caveat cum-written statement . But any formal caveat as required under law was not filed. It appears that on that day i.e. 2nd February 2008, he (Sidheshwsar Chatterjee) was also allowed to cross-examine Mrs. Shefrali Mukherjee (A.W.3).

Subsequently it being so found that any formal caveat was not on the record, he (Sidheshwar Chatterjee), caveator filed a formal caveat in prescribed manner on 14th August 2008. Learned counsel for the caveator submitted that the caveator remained under the impression that his objection filed as early as on 2nd February 2008 could be treated as an objection to the caveat and which objection is required to be filed under the provisions of Rule 18 of Chapter-XI of the Patna High Court Rules. But it was further submitted that the objection filed earlier on 2nd February 2008 was not considered to be a proper objection which is required to be filed after filing of caveat. Hence, in this context this Court's order dated 21st August 2008 was also passed as follows:

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"It has been pointed out by learned counsel for the applicant that objection petition should have been filed after filing of caveat but so its not the case here. Objection has been filed on 2nd February 2008 and caveat has been filed on 14.8.2008.

The caveator, if so likes, may file objection within three weeks. The objection filed earlier may be kept on the record."

It was after passing of the aforesaid order dated 14th August 2002 of this Court that the caveator filed his objection on 4th

Septembers 2008. Thus, the objection was filed 20 days after filing of the caveat which was filed on 14th August 2008.

Learned counsel for the applicant objected to the objection dated 4th September 2008 as filed by the caveator. It was submitted by him that under Rule 18 of Chapter-XXI of the Rules, the objection has to be filed within 8 days of the filing of the caveat. Rule 18 of the Rules reads as follows:

"Rule-18.- where a caveat is entered after an application as has been made for a grant of probate or letters of administration with or without the will annexed, the affidavit or affidavits in support shall be filed within 8 days of the caveat being lodged notwithstanding the long vacation. Such affidavit shall state right and interest of the caveator and grievance of the objections to the application".

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Referring to the aforesaid provisions under Rule 18 of the Rules, it is argued by the applicant's counsel that the rule is mandatory and it directs the objection to be filed within 8 days of the filing of caveat. It is also submitted that since the caveator has filed the objection after 21 days of filing the caveat, the same cannot be accepted under law and hence the prayer for acceptance be rejected.

In support of his contention, the learned counsel for the applicant cited a decision of this Court in the case of Late Rajo Singh, Ramautar Singh @ Ganesh Shankar reported in 1994(1) PLJR 636 wherein it has been held that the Rule-18 of Chapter-XI Part-II Patna High Court Rules, 1916 directing filing of objection within eight days is mandatory. On the basis of what has been held in this decision it was argued that since it was mandatory under the Rule to file the objection

within eight days it was incumbent upon the caveator to file it within a period of eight days and since it has not been filed within the period, the objection should be discharged.

The learned counsel for caveator argued that vide this Court's order dated 21.8.23008 three week's time was allowed for filing objection and the caveator had filed the objection within 14 days of the order and thus it was within time as allowed by the Court.

Considering the ratio as laid down in the cited case, I find that the objection is required to be filed within eight days unless there is any order otherwise of the Court. In the instant case the Court had allowed three week's time. The applicant did not make any objection to this court's order nor moved any appeal before any higher Court for setting aside that order granting time to the caveator for filing objection, hence, the order became final. Now, at this stage, this Court cannot sit over in appeal upon its own order under consideration saying that the same was wrong in the view of the provisions under Rule-18 Chapter-XI of the Patna High Court Rules.

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In such view of the matters, I find that it is fit and proper to accept the objection and, therefore, the same is accepted.

This proceeding will accordingly be converted into a testamentary suit as provided under Order 21 Chapter-XI Part-II of the Patna High Court Rules. The objection filed by the caveator will be treated as written statement of the caveator.

Jay/Ravi. **(C.M.Prasad,J)**

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